Supreme Court, U.S.
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No. 04- 04 393

In The
SUPREME COURT OF THE UNITED STATES

Cappy Ascheim,
Petitioner,

v.

Fred C. Jug Jr.;
Brandt, Milnes & Rea,
Respondents.

(United States Court of Appeals
Third Circuit No. C.A. 02-2888)

On Petition for a **Writ of Scire Facias** at the Common Law
(as preserved from its original proclamation
by the First Congress in 1789)
from the Supreme Court of the United States,

which is inextricably bound up with

Petition for a Writ of Certiorari
(at the Common Law and/or by statute)
from the Supreme Court of the United States
to the United States Court of Appeals for the Third Circuit.

PETITION FOR WRITS OF SCIRE FACIAS AND CERTIORARI

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Questions Presented

I. Whether a litigant has an enforceable constitutional right, arising from the Framers' meaning of the "good Behaviour" tenure standard of Sept. 17, 1787

> which is the written phrase utilized in intellectual victory emergent from the July 4, 1776 independence declaration against King George III of Great Britain, who "made judges dependent on his will alone, for the tenure of their offices",

to secure the honesty of each Article III Judge before whom that litigant appears, through the issuance of a writ of scire facias,

> as said writ is proclaimed in Section 14 of the Judiciary Act of Sept. 24, 1789 (1 Stat. 73, 81-82) and therein prominently elevated by the First Congress (that included some of the Framers) ahead of the most celebrated writ in the English law and the only other named writ, and as preserved in the present language of 28 U.S.C.§1651(a) (62 Stat. 944)

for the purpose of commencing a judicial ouster proceeding against each such Article III Judge whose dishonest acts committed in a judicial capacity violate the mandate imbedded in the "good Behaviour" tenure condition of Article III, Section 1, and raise justiciable issues to be addressed and determined in a judicially controlled judicial ouster trial.

II. Whether an Article III United States Third Circuit judge violates the "good Behaviour" tenure standard of Section 1 of Article III while exercising the office of judge during consideration and determination of the same routine procedural point of law in 2 different and unrelated cases

(one month apart: 01-4374 - March 10-13, 2003;
02-2888 - April 2-17, 2003)

each case, however, relating solely to the filing of overlength briefs in the Third Circuit, and thereupon **dishonestly** decides that same routine procedural point of law so differently as to create completely different and arbitrary standards for different litigants depending on grounds never judicially articulated in writing and in no way legally relevant to the routine procedural issue of overlength briefs in the Third Circuit, thereby materially infringing on the rights of the unrepresented litigant at 02-2888 by virtue of such judicial behaviour:

leading to the ouster of him from the ability to present to the Third Circuit his completed arguments on the merits of the appeal which included what had been previously regarded in a Third Circuit footnote etched into a Jan. 7, 2003 Opinion in a connected case as worthy of presentation with respect to the propriety of certain behaviour of the district court judge;

and leading to the ouster of him from the ability to present to a U.S. Court of Appeals for the first time in American History the legal theory that a district court judge's violation of the 'good Behaviour" tenure condition while exercising the office of judge creates justiciable issues reasonably to be presented and determined at a judicially controlled trial commenceable on a writ of scire facias,

which legal theory is soundly grounded in unrepresented litigant Cappy Ascheim's 99% completed, without pagination and paragraphing, already-filed-of-record since Feb. 20, 2003, 21 page pioneering legal and historical study incorporated, **fully completed**, into the jurisdiction section of his overlength Informal Brief submitted March 24, 2003 with a 1-page March 24 motion for leave to file same, which 21-page study addressed in great detail the common law interconnectedness of "good Behaviour" tenure as the same was understood by the Framers in 1787, and the writ of scire facias that was placed in the first version of the all writs act by the First Congress (including some Framers) in 1789, **ahead** of the only other writ named therein, which Blackstone regarded as the most celebrated writ in the English law.

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AND NOW, comes the Petitioner, unrepresented litigant, Cappy Ascheim, and respectfully petitions this Court for Writs of Certiorari and Scire Facias to review the judicial "Behaviour" of Circuit Court of Appeals Judge Rendell in connection with her orders in this case; and to review the orders of the Third Circuit in this case; and to review the behavior of the Third Circuit clerks in deliberately returning the record to the District Court on June 23, 2003, a point when they knew there was pending and undetermined a timely motion to reopen the appeal filed June 19, 2003.

ORDERS BELOW

There are no Third Circuit Opinions below. Circuit Judge Rendell entered her Order on April 17, 2003 denying Petitioner's routine 1-page March 24, 2003 motion for leave to file overlength March 24, 2003 Informal Brief (Appendix C). Circuit Judge Rendell entered her Order May 9, 2003 denying the motion to reconsider her April 17, Order (Appendix B). The Third Circuit Clerk entered her Order "For the Court" on June 5, 2003, ordering that "pursuant to Rule 3(a) of the F.R.A.P. and Third Circuit LAR Misc. 107.2", No. 02-2888 is "dismissed for failure to timely prosecute" (Appendix A). The Court of Appeals (per Nygaard, Barry and Smith) entered its Order October 24, 2003 denying the June 19, 2003 motion to reopen the appeal. (Appendix E). Circuit Judge Nygaard entered his Order Feb 24, 2004 granting the motion for leave to file exhibits to the Nov. 6, 2003 petition for rehearing (Appendix D). The Court of Appeals filed its Order April 23, 2004 denying the petition for panel rehearing (Appendix F). None of the foregoing Orders is otherwise published.

STATEMENT OF JURISDICTION

The Court of Appeals entered its Order at 02-2888 Oct. 24, 2003 and denied panel rehearing on April 23, 2004. On July 26, at Supreme Court Application No. 04A79 Justice Souter extended the time to file this petition to and including September 20, 2004. Petitioner invokes this Court's jurisdiction pursuant to 28 U.S.C. §1254(1) and pursuant to 28 U.S.C. §1651(a) preserving the authority of this Court's power to, *inter alia*, issue writs of scire facias **explicitly** set forth in section 14 of the Act of September 24, 1789.

[See also, Appendix M, p, 23a: a Court of Appeals Opinion, in connected appeal No. 02-1558, "note(d) that appellant has perfected an appeal ... at C.A. No. 02-2888."]

CONSTITUTIONAL AND STATUTORY PROVISIONS

Please see Appendix G, p. 7a, setting out verbatim the "good Behaviour" tenure condition of Article III, Section 1 of September 17, 1787; Section 14 of the Act of September 24, 1789, 1 Stat. 73, 81-82; and 28 U.S.C. §1651(a).

STATEMENT OF THE CASE

A. The Cindrich "Behaviour" discernable from his March 30, 2001, January 25, 2002 and October 31, 2002 "Memorandum Opinions" at 00-1056.

This case arises out of a timely, amended notice of appeal taken on Dec. 2, 2002, Doc. No. 60, pp. 1 & 2 of 5 at 00-1056, by Petitioner Cappy Ascheim to the Third Circuit

Court of Appeals from the Oct. 31, 2002 "Memorandum Order", Doc. No. 59, of Judge Robert J. Cindrich of the U.S. District Court for the Western District of Pennsylvania denying Cappy Ascheim's June 14, 2002 motion for reconsideration, Doc. No. 55, of the June 4, 2002 Order, Doc. No. 54, dismissing in its entirety the underlying Fair Debt Collection Practices Act (FDCPA) lawsuit under 15, U.S.C. §1692 which Cappy Ascheim had filed in his individual capacity on May 30, 2000 at No. 00-cv-1056 and captioned as follows:

Cappy Ascheim, Plaintiff v. Fred C. Jug Jr.,
and Brandt, Milnes & Rea, Defendants.

The initial notice of appeal from the June 4, 2002 Order was filed at 00-1056 on July 8, 2002, Document No. 56, and was docketed at Third Circuit No. 02-2888 on July 15, 2002. Because the June 14, 2002 motion for reconsideration was still pending in the district court on July 15, 2002, the Clerk of the Third Circuit entered a Clerk Order on August 7, 2002 pursuant to Fed. R. App. P. 4(a)(4)(B)(i) staying the appeal pending disposition by the district court judge of the post decision motion.

Said stay was referred to in the Opinion, Appendix p. 18a (unreported - not precedential) of the Third Circuit (Becker, Chief Judge, Weis and Garth, Circuit Judges) filed Sept 17, 2002 at No. 02-2930 on a Petition by Cappy Ascheim for Writ of Mandamus from the District Court of Judge Cindrich (related to W.D.Pa. No. 00-cv-1056). In a succinct recital of the procedural posture of Cappy Ascheim's three, then pending appeals to the Third Circuit, the Third Circuit, as of September 17, 2002, wrote as follows:

> "In May, 2000, Ascheim filed a complaint in the District Court alleging the defendants violated the FDCPA during efforts to collect condominium fees from his mother. In January 2002, the District Court entered an order granting defendants' motion to enjoin Ascheim from prosecuting the lawsuit on

behalf of his mother without an attorney. Ascheim filed a notice of appeal, which is currently (on Sept. 17, 2002) pending in this Court. See C.A. No. 02-1558. On June 4, 2002, the District Court entered an order dismissing Ascheim's complaint for failure to obtain an attorney in violation of the District Court's order entered in January 2002. Ascheim filed a motion for reconsideration followed by a notice of appeal. Ascheim's motion for reconsideration is (on Sept. 17, 2002) still pending in the District Court and his appeal (at 02-2888 on Sept 17, 2002) is pending in this Court [1].

[1] Because Ascheim's notice of appeal was filed before the District Court disposed of his motion for reconsideration, the notice of appeal docketed (on July 15, 2002) at 02-2888 will become effective to appeal the underlying order when the District Court disposes of his motion for reconsideration. Fed. R. App. P. 4(a)(4)(B)(i).

See C.A. No. 02-2888. Ascheim's mandamus petition seeks an order directing the district court to vacate its order dismissing his case entered June 4, 2002. ... Ascheim has made no showing (nor does it appear that he could show) that the relief requested in his petition for writ of mandamus cannot be pursued in his pending appeals. As noted, mandamus is not a substitute to the normal appellate process. Accordingly, we will deny Ascheim's writ of mandamus". App.18a.

As noted by the Third Circuit on Sept. 17, 2002, Cappy Ascheim's appeal at 02-1558 was then pending in that Court; it had been taken by him on Feb. 25, 2002 from the Jan. 25, 2002 order of the Cindrich Court granting an **injunction** to the defendants herein (Fred C. Jug Jr. and Brandt, Milnes & Rea) against Cappy Ascheim.

In deciding the appeal at 02-1558 the Court determined that "We have jurisdiction over the instant appeal pursuant to 28 U.S.C. §1292(a)(1)[1].

> [1] We note that appellant has perfected an appeal from the District Court's subsequent order dismissing the underlying case in its entirety at C.A. No. 02-2888. The parties' arguments regarding the propriety of the district court's dismissal of any claim Ascheim allegedly brought in his individual capacity as opposed to those brought on behalf of his mother, should thus be presented in the briefs submitted in that appeal once the District Court has disposed of Ascheim's pending post decision motion". App. 23a.

The foregoing appeal at 02-1558 was captioned identically as, and the record is identical to the appeal at 02-2888 (the instant case), and the opinion filed January 7, 2003 at 02-2888 by Alito, Barry and Garth, Circuit Judges, allowed the appeal to go forward at 02-2888 to contest, *inter alia*, just which claims Cappy Ascheim had brought in his individual capacity, as opposed to those brought on behalf of his mother.

The District Court record at 00-1056 beginning on May 30, 2000 will disclose that Cappy Ascheim initiated no effort to prosecute any FDCPA claim on behalf of his Mother until the filing on July 31, 2001 (the deadline set by Judge Cindrich for amending) of a motion to amend (Doc. No. 22) his complaint (Doc. No. 1) and his Rule 15(a) Amendments thereto (Doc. No. 4) to, *inter alia,* add one more claim in her name under 15 U.S.C. §1692f(i), a section of the FDCPA appearing nowhere in the claims recited in Doc. No. 1 and No. 4. The only other claim Cappy Ascheim had previously attempted to advance on behalf of Esther F. Ascheim had been thrust in his face by Judge Cindrich's March 30, 2001 "Memorandum Order":

> " . . we (sic) interpret the complaint as asserting a Section 1962(sic)c(b) claim by Ascheim on his mother's behalf". App. 10a.

Such judicial language allowed, nay invited Cappy Ascheim to begin prosecuting "a claim on his mother's behalf" at 00-1056 starting on March 30, 2001. Ergo, subsequent to the untranscribed Case Management Conference held on May 25, 2001 (Doc. No. 20) at which Judge Cindrich had all sorts of opportunities to dis-invite Cappy Ascheim from representing the interests of anyone else in federal court than Cappy Ascheim, Cappy Ascheim followed -up such judicially allowed representation of Esther F. Ascheim by filing on July 31, 2001 the Motion to Amend (Doc. No. 22).

Only after defendants filed Doc. No. 32 seeking an **injunction** against Cappy Ascheim on Oct. 12, 2001 did Judge Cindrich appear to begin to become intellectually cognizant of controlling Third Circuit authority published in 1991 relating to a non-attorney representing the legal interests of others in federal court. The Cindrich Court entered its Jan. 25, 2002 **injunctive relief** order labeled and repeatedly referred to therein as "Memorandum Order", App. 12a, thus subliminally, but only superficially, masking its **true legal character** as an interlocutory order immediately appealable to the Third Circuit pursuant to 28 U.S.C. §1292(a)(1). By Judge Cindrich's interlocutory Jan. 25, 2002 **injunction** against Cappy Ascheim, Judge Cindrich finally began to apply (after abandoning for over 7 months) the controlling 1991 principles available to himself (with a mere modicum of legal research) since on and before March 30, 2001, that had been espoused by the Third Circuit in Osei-Afriye v. The Medical College of Pennsylvania, 937 F.2d 876 (3d Cir.).

When compelled to defend his so-called "Memorandum Order" executed Jan. 25, 2002 by Cappy Ascheim's careful legal maneuverings (June 14, 2002 Motion for Reconsideration of the June 4, 2002 Order dismissing 00-1056 in its entirety; July 8, 2002 Notice of Appeal effective beginning Oct. 31, 2002 at 02-2888; and the mandamus petition docketed at Third Circuit No. 02-2930 on July 15,

2002) Judge Cindrich deliberately crafted his Oct. 31, 2002 "Memorandum Order" to avoid acknowledging, while exercising his judicial office, the true legal character of **his own injunction** entered against Cappy Ascheim on Jan. 25, 2002 and instead preposterously asserted that Cappy Ascheim's appeal commenced at Third Circuit No. 02-1558, through "the Feb. 25, 2002 notice of appeal, was prematurely filed". App. 21a. Such preposterousness was followed by Judge Cindrich's apparently knowingly meritless contention that the Jan. 25, 2002 injunction "was not immediately appealable". App. 21a. Such judicial dishonesty, as regarded by Cappy Ascheim, was very drily dispatched by the Third Circuit Opinion filed Jan 7, 2003 at 02-1558 in the following single sentence:

> "We have jurisdiction over the instant appeal (at 02-1558) pursuant to 28 U.S.C.§1292(a)(1). (Footnote recited supra, p. 5.)"

See, now, that footnote, unambiguously ruling that Cappy Ascheim "has perfected an appeal ... at C.A. No. 02-2888". Ibid. App. 23a.

Cappy Ascheim, subsequent to the Cindrich Oct. 31, 2002 "Memorandum Order", faithfully and timely submitted his overlength Informal Brief on March 24, 2003 at 02-2888, containing, *inter alia,* "arguments regarding the propriety of the district court's (June 4, 2002) dismissal of any claim Ascheim allegedly brought on behalf of his mother". App.23a. This Petitioner (for Scire Facias/Certiorari) also crafted arguments therein to further confront what he regards as the full range of dishonest judicial behaviour of Judge Cindrich while exercising the office of judge in violation of his "good Behaviour" constitutional contract with the People of America sealed by "Voice Vote" of the United States Senate recorded on October 7, 1994. App. 27a.

In endeavoring to exhibit to the Third Circuit at 02-2888 the historicity of its jurisdiction regarding the writ of scire facias, which had been placed with loving legal

attention by the First Congress (including some Framers) by insertion into the lead in Section 14 of the Historic Judiciary Act of Sept. 24, 1789, ahead of the only other writ named therein, habeas corpus, long regarded by Blackstone as the most celebrated writ in the English law, 3 Bl. Comm. 129, Cappy Ascheim was compelled to seek time extensions at 02-2888. In his 2nd such motion, timely filed Feb. 20, 2003 (granted by Clerk Order dated Feb. 27, 2003 without any cautionary or negative word regarding appellate court brief page limitations), there was attached as an Exhibit his 99% completed 21-page pioneering legal and historical study that was carefully crafted with the "plea" so elegantly framed in 1913 by C.H. McIlwain of Harvard University uppermost in mind:

> "I want to put in a plea for the historical study of our political problems such as judicial tenure ... for we can't know what we have unless we know how we got it." The Tenure of English Judges, 7 American Political Science Review 217, at 229, see Exhibit 2-14 of Appendix F attached to Cappy Ascheim's Application in this Court at No. 04A79 granted by Justice Souter on July 26, 2004.

Cappy Ascheim humbly expresses that he is quite certain that his 100% fully completed, 21-page historical study (Exhibit 2-14 to 2-34 Ibid, attached as page 14 to 34 of his timely March 24, 2003 overlength Informal Brief submitted at 02-2888) has at least adequately answered "how we got" both the "good Behaviour" judicial tenure condition of Sept. 17, 1787 and the writ of scire facias in conjunction therewith as the same so powerfully captured the intellectual, historical imagination of our Nation's First Congress on and before Sept. 24, 1789.

The efforts by Cappy Ascheim to commence a proceeding, which efforts led directly to the overlength nature of his March 24, 2003 Informal Brief at 02-2888 and of his overlength Informal Brief at 02-1558, a proceeding exposing

the breakdown of the "good Behaviour" required of an Article III judge while exercising the office of judge, is grounded in a powerfully simple idea. It is an idea that has remained hidden in the structure of the Constitution itself, barely noticed by scholarly writers, and never presented to an Article III Court until now. A litigant in an Article III court is constitutionally entitled to be treated with at all times, during the pendency of such litigation, by an honest judge not acting in conflict with the "good Behaviour" condition of his tenure. Such efforts led Cappy Ascheim to, *inter alia*, the salutary 1949 words of the Honorable Mr. Jerome Frank:

> "The schools (of law) should also concern themselves with the problem of the effect of judicial corruption. Of that problem, law students learn little or nothing. If one inquires why, he is told that dishonest judges and purchased and 'fixed' decisions are 'abnormal'. That answer does not content me. I share the hope that all crooks will be driven from the bench; but that hope, alas, is not yet a reality – and probably will never be if the law schools maintain their present policy of failing to discuss the subject in classrooms."
>
> "It is objected that public reference to any judicial dishonesty may create the incorrect and unfair belief that many judges are dishonest. The answer is to say—as I do say unequivocally—that fortunately most of the judiciary is honest, that but a few scamps manage to get on the bench, and that the best way to avoid unfairness to the vast majority of judges is to oust the few rascals." (Emphasis supplied.) At pp. 240, 241. See Exhibit 2-33 of Appendix F of Cappy Ascheim's Application at No. 04A79 granted by Justice Souter.

Left unmentioned in the learned Mr. Frank's illuminating 1949 book (Courts on Trial) is the procedural means of proceeding "to oust the few rascals".

One answer, in summary form, is herein humbly submitted to be the issuance **from** this Court, of a writ of scire facias upon "good Behaviour" violations charged, ultimately returnable, pursuant to such issuance:

On Petition for a Writ of Scire Facias at the Common Law
from the Supreme Court of the United States
to a special court patterned after "this special court"
as established in the Third Circuit on Jan. 16, 1948 by
Order of Chief Justice Fred M. Vinson to hear and
determine Root Refinery Co. v. Universal Oil Products Co.,
169 F.2d 514, 541, 519, 516, to be comprised of
Article III Judges and Justices sitting as:

The United States Judiciary Court
for
Scire Facias
Protection, Suspension & Removal
of
Article III Judges and Justices
holding their offices solely as a
consequence of the Sept. 17, 1787
"good Behaviour" condition for
judicial tenure imbedded in
Section 1 of Article III of
The Constitution of
The United States of America.

B. Cappy Ascheim's experiences in filing overlength briefs in the Third Circuit in three appeals: 02-1558, 02-2888 and 03-2350; and the judicial behaviour of Circuit Judge Rendell exercising her judicial office deciding the same procedural point of law on overlength briefs in 2 unrelated appeals one month apart at 01-4374 and 02-2888.

Because Circuit Judge Rendell's Order dated April 17, 2003, App.3a, denied Cappy Ascheim's routine 1-page March 24, 2003 motion (See Application at this Court's No. 04A79, Appendix F at Exhibit 2) for leave to file overlength brief at 02-2888, and stated, simply, that he "has 14 days from the date of this order to file a conformed brief", see App. 3a, he had to carefully consider how to interpret "a conformed brief" which Rendell refused to elaborate upon respecting the number of allowable pages for what she silently viewed to be "a conformed brief".

Of course, on April 17, 2003, Judge Rendell knew (as Cappy Ascheim did not know) she was fresh from considering and granting the routine motion by the USA at 01-4374 (USA v. Merlino) for leave to file a 298 page brief in an appeal involving 7 defendants and 7 appeals (7x30=210), and the time frame involved was from March 10-13, 2003 in which Rendell granted the USA's routine motion: App. 24a.

On April 17, 2003 Cappy Ascheim only knew that FRAP 32(a)(7)(A) states that "a principal brief may not exceed 30 pages, or a reply brief 15 pages", with exceptions beyond his technological capabilities. He is also aware that his briefs submitted (at 02-1558) were both overlength and each was treated with by a clerk deputy, NOT a circuit judge or panel, a procedure both informal and relaxed.

A June 10, 2002 phone call he received from Gregory P. Kane caused him to submit a letter docketed "6/14/02" and construed as a motion to file brief as overlength at 02-1558, and a clerk order by Mr. Kane (without the outward intervention of any judges) was entered, granting that routine motion on "6/18/02" for a Brief of "Pages: 41". Also at 02-1558 on "8/7/02", a different clerk granted his routine motion "for leave to file overlength Reply Brief containing 19 pages". See Docket Sheet for 02-1558. As noted, the FRAP limits are "30" and "15" and Rendell's construction is willfully vague.

Cappy Ascheim also had attached his 21-page 99% completed "good Behaviour" scire facias scholarly legal study to his Feb. 20, 2003 motion for more time at 02-2888, and on Feb. 27, 2003 a clerk order set March 24, 2003 as a deadline he met by submitting his 58-page Informal Brief with those 21 fully completed pages attached (pp. 14-34). See 04A79 Application, Appendix F at Exhibit 2-14 *et seq.*

In Cappy Ascheim's other FDCPA appeal (not involving the instant defendants but involving Judge Cindrich), he submitted on Oct. 14, 2003 at 03-2350, Cappy Ascheim v. James R. Mall, et al., a routine 1-page motion for leave to file his 40-page Informal Brief as overlength, therein citing USA v. Merlino, 01-4374, supra. Circuit Judge D. Brooks Smith routinely granted said Motion on Oct. 29, 2003 without outwardly raising a judicial eyebrow. Cappy Ascheim subsequently filed a 1-page routine motion on Nov. 28, 2003 for leave to file an overlength reply brief of 19 pages and a clerk Order (Gregory P. Kane) routinely granted that motion at 03-2350 on Dec. 22, 2003. When that appeal was determined on March 18, 2004, (affirmed in part, reversed in part and remanded), the lead judicial panelist was none other than Circuit Judge Marjorie O. Rendell, whose behaviour therein is regarded as having breached the "good Behaviour" tenure condition of Article III at 03-2350.

In light of his experiences up through April 17, 2003 regarding overlength briefs, together with Judge Rendell's conscious refusal to explain what she meant by "a conformed brief", Cappy Ascheim had no realistic way of ascertaining how many pages would be unacceptable to Rendell, and thus decided to challenge her April 17, 2003 Order (App. 3a) and did so by motion served April 30, 2003, which resulted in Rendell's Order dated May 9, 2003. App. 2a. It was the May 9 order which freed the Clerk, Marcia M. Waldron, to enter on June 5, 2003 her June 5, 2003 Order, "pursuant to Rule 3(a) of the (FRAP) and Third Circuit LAR Misc. 107.2", "order(ing) that (02-2888) is hereby dismissed for failure to

timely prosecute" and "that a certified copy of this order be issued forthwith as the mandate". App.1a.

Cappy Ascheim thereupon challenged the June 5, 2003 Clerk Order by timely serving his document on June 18, 2003 for U.S. Postal Service delivery to the Third Circuit Clerk on June 19, 2003, which did occur that day. His pleading actually was entitled as 4 separate motion and titled as motions, each titled as motion:

"to set aside the Clerk's order dated June 5, 2003, etc.",
"to stay and/or recall any mandate, etc.",
"under FRAP 32(a) for an order, etc.", and
"under FRAP 2 to suspend the page limitations, etc.".

That pleading was eventually docketed entitled as "Motion by Appellant to Reopen Appeal", but was withheld from docketing in the Third Circuit by the Third Circuit until about 7/15/03 - long after the entire "RECORD" of C.A. No. 02-2888 had **unbelievably** been "RETURNED" to the District Court on "6/23/03", App. 26a, in spite of the obvious fact that the Clerk of the Third Circuit knew that Cappy Ascheim had timely filed a motion to reopen the appeal 4 days earlier, on June 19, 2003, which remained pending up through Oct 23, 2003. The returned record was then docketed at 00-1056 with an "Entry date" of "6/25/03". On July 15, 2003 the Dist. Ct. Clerk made the following entries:

"7/15/03 MOTION TO REOPEN APPEAL per USCA (plh)"
"7/15/03 Certified and transmitted Actual Record on Appeal to U.S. Court of Appeals: (plh)". See App. 26a.

After the entry of "RECORD, received" was made by "(sma)", i.e. Susan M. Acerba, on "7/18/03", no further docket entry occurred until Oct. 24, 2003 when the panel consisting of Circuit Judges Nygaard (authoring), Barry and Smith denied the "motion to reopen appeal by Appellant" plainly pending since June 19, 2003. App. 26a.

Cappy Ascheim thereupon served on Nov. 5, 2003 his Petition for Panel Rehearing and for Rehearing En Banc of

the Oct. 24, 2003 panel order denying his June 19, 2003 motion to reopen appeal. Attached to the rehearing petitions was his 99% completed, 21-page scholarly, historical legal study attached as previously filed as an exhibit to his Feb. 20, 2003 motion for more time (granted to March 24, 2003). Eventually, on Dec. 23, 2003 Susan M. Acerba finally got around to mailing Cappy Ascheim a "NONCOMPLIANCE LETTER" stating that "Appellant needs to file a motion for leave to file the petition for rehearing (served Nov 5, 2003) with excess pages." See letter at 04A79 Application at Exhibit 5 of Appendix F.

Cappy Ascheim was delighted to seize the opportunity to implement another proper legal maneuver and did so by serving such a motion for leave on Jan 5, 2004 with the 100% completed pioneering 21-page study annexed thereto, enabling a juxtaposition by honest judges to occur between it and the 99% complete version, lacking only pagination and paragraphing. (Please observe that the entire 1/5/04 Motion, including those 100% completed 21-pages are annexed as Appendix F of 1/5/04, which in turn was presented on July 21, 2004 to Mr. Justice Souter at Supreme Court No. 04A79 as part of his voluminous Application for Extension of time that regrettably was outside the 10 day requirement of Supreme Court Rule 30.2; and by granting said Application on July 26, Justice Souter found "the most extraordinary circumstances" to exist therein, or he would not have granted it.)

On Feb. 24, 2004, Judge Nygaard hand wrote "Petition granted" on his order, App. 4a, that Cappy's motion for leave to file exhibits to rehearing was a viable motion, citing as it did the difference in the way in which the Third Circuit and the Ninth Circuit treat with what the latter might call "a fat brief": USA v. Merlino-Tarazon, 285 F.3d 807 (9th Cir. 2002). Whereas the 9th Circuit has a written rule, (and the 3rd Circuit does not) stating that leave to file a fat brief:

> " 'will be granted only upon a showing of diligence and substantial need' ... To satisfy that standard, counsel must show the additional space is justified by something unusual about the issues presented, the record, the applicable case law or some other aspect of the case. Counsel has shown nothing of the sort; nor is it self-evident what this something might be". Ibid. at 808.

Cappy Ascheim here submits that, with respect to his 58-page March 24, 2003 Informal Brief with that 100% completed 21-page scholarly study annexed as pp 14-34:

> "Some things are self-evident, as Bishop Berkley discovered when he ran from the sound of hoofbeats in Bristol, although he saw nothing menacing." Bernheim v. Colton, New York State Supreme Court, per Justice Wright, N.Y.L.J., p. 12, col. 3, Oct. 18, 1985.

Judge Nygaard appears clearly to have silently applied the Ninth Circuit standard in considering and granting the Jan. 5, 2004 motion for leave to file excess pages to the Nov. 6, 2003 rehearing petition; but if he did not, then he simply treated with an overlength brief using the relaxed Third Circuit standards outlined in the foregoing recitation of the routine filing of overlength briefs, with one very notable exception being the judicial conduct of Judge Rendell at 02-2888 regarding the 37 plus 21-page March 24, 2003 overlength brief at issue herein.

Finally, the original panel denied the Nov. 6, 2003 petition for rehearing on April 23, 2004, thereby exhausting the possibility of any further relief from the Third Circuit at 02-2888. App. 6a. Also, please see Appendix C of the Application granted by Justice Souter on July 26, 2004 at Supreme Court No. 04A79, upon which is Cappy Ascheim's handwritten note explaining his inability to reproduce the text of the April 23, 2004 order.

Reasons for Granting the Scire Facias - Certiorari Petition are:

I. To test in an Article III Court, for the first time in American History, the "good Behaviour" tenure clause as the fountain of Constitutional Justice available to every Article III court litigant seeking a remedy through appellate jurisdictional channels in a pending case against judges who act dishonestly while exercising their offices by, *inter alia,* deliberately crafting 2 different standards relating to the same procedural point of law depending on the identity of the litigant or other deliberately improper standards; and to insure that the unprecedented Question 1, supra, receives a full and fair airing in order to establish in an Article III court, once and for all, that "good Behaviour" violations charged against Article III judges create unambiguous justiciable issues presentable for trial on writs of scire facias issuable from the Supreme and Circuit Courts of the United States as the first Congress intended on Sept. 24, 1789.

The notion is deeply rooted in American History that the "good Behaviour" tenure clause creates justiciable issues and was not suddenly dreamed up by your humble common citizen appellant, but was located by him in Professor Philip B. Kurland's 1969 article , "Tenure of Federal Judges", 36 U. Chi. L. Rev. 665, which recites passages from a 1937 Cong. debate on House Jud. Com. Chairman D. Hatton Sumners' Judicial Good Behavior Bill. Said that gentleman from Texas at one point:

> "If the Senate cannot make vital the 'good behavior' provision in the judicial tenure clause, and clearly it cannot do it, what agency of government can do it? The historical background precludes any notion that the President can effectuate those words, because those words went into the framework of the English constitution from which we appropriated them, in

> order to prevent the Executive from having anything to do with it. So, by the process of elimination we come to a court as the only agency of government that can keep those words from being dead words in the Constitution. I think everybody must agree with that..." (Emphasis Supplied). 81 Cong. Rec. 6163-6 (1937), Kurland at 689-690.

"No clause in the Constitution is without meaning. Marbury v. Madison, 1 Cranch 137, 174, 5 U.S. 137, 174, 2 L.Ed. 60, and Holmes v. Jennison, 14 Pet. 540, 571, 39 U.S. 540 571, 10 L.Ed. 579. U.S. v. Isaacs, 493 F.2d 1124, 1141, cert. den. 417 US 976, reh. den 418 U.S. 955 (7th Cir. 1974).

The profoundly accurate gentleman from Texas is only lacking one element. This missing element (and missing from every scholarly article and one important case, U.S. v. Isaacs, Ibid, read by Cappy Ascheim so far), is that of a litigant in a pending Article III case who regards himself aggrieved by the behaviour of that Article III judge and, proceeding through the existing jurisdictional appellate apparatus, sues for issuance of the ancient writ of scire facias already provided by the First Congress on Sept. 24, 1789, 1 Stat. 73, 81-82, and there elevated above what Blackstone regarded as the most celebrated writ in the English law, 3 Bl.Comm.129. The learned Texan failed to notice, as had practically everyone else, that no congressional bill would ever be necessary to provide the court what his 1937 Good Behaviour Bill sought. Cappy Ascheim humbly avers he has thoughtfully fashioned the name and broad outline of a proposed Court, and has patterned it after the "special court" established on Order of Chief Justice Vinson in 1948 to deal with judicial corruption in the Third Circuit relating to Root Refinery Co., Inc., supra, 169 F.2d 514, 541. See p. 10 supra.

Later in that 1937 debate, the same speaker, Chairman Sumners of Texas, continued (Kurland at 690-691):

> "'Good behavior' by its nature is a justiciable issue. By its use it is made a condition in the right of every

judge to hold office. It is a triable issue. There is no court to try it. This bill provides the court. If there is no court there is no agency to make effective that important condition in this particular section of the Constitution....

Unquestionably it is a fact as everybody will agree that we took the provision of our Constitution under consideration from the English Constitution. Everybody knows that. I have in my hand a recognized authority as a commentator on the English Constitution, Todd. He says that 'good behavior' in the English Constitution has always been recognized as a justiciable issue triable in their courts by scire facias, a proceeding similar to our quo warranto...

It is recognized in England, when we brought this provision into our Constitution, that there were four methods of getting rid of judges: By impeachment; by joint address of the two Houses; by conviction for an offense; and by writ of scire facias, which is exactly the process that we expect to institute under this provision...

It is a queer thing that the notion is so deeply rooted that because we may remove a judge by impeachment we may not remove him by court action in a suit brought to enforce a clear condition attached to his right to hold office....". (All emphasis supplied.)

Twenty five years earlier, in 1912, another debate occurred, but in the Senate, and was on the question whether to abolish the Commerce Court of the U.S. Let's listen to the powerfully expressed opinion of Senator Henry Cabot Lodge:

"It would be most interesting and instructive if we were to enter for a little while, and I do intend to do it, upon the consideration of the term 'good behavior'; there is a prevalent notion throughout the country that judges of the Federal courts are appointed for life. This is not true. They are appointed during good

behavior. I recognize that I am not now speaking directly to the point at issue, but we so often hear the expression that Federal judges are appointed for life that I want to give some publicity to the real language of the Constitution, which is 'during good behavior'. I am not one of the persons who believes that the determination of what is good behavior can be had only in an impeachment trial. My friend from Utah says that unless a Federal judge is removed from his office by the process of impeachment for high crimes and misdemeanors he must remain there during his natural life. I can not agree to that statement. I do not intend to pause to even discuss what procedure could be established by Congress in order to determine what good behavior is and what it is not; but I believe that there is misbehavior on the part of a judge for which he can be removed from office that does not arise to the dignity or the severity of either a crime or a misdemeanor....". 48 Cong. Rec. 7999-8000 Kurland at 685.

Prof. Kurland began his article with this observation:

"Almost every generation since the founding of this nation has raised the question, in one form or another, for good reasons and bad, whether Federal judges are removable from their offices by means other than impeachment and for causes other than the commission of 'high crimes or(sic) misdemeanors'. The issue has never been successfully framed for a definitive resolution by the Supreme Court." Kurland at 665.

Cappy Ascheim's 100% completed 21-page scholarly study, designed to pave a proper legal road to the framing of said issue, was finally made a permanent part of the Third Circuit record at 02-2888 on Feb. 24, 2004 by Judge Nygaard (App. 4a),but only after an intensely prolonged procedural

struggle, the seeds of which had been planted on Feb. 20. 2003, but which commenced in earnest on March 24, 2003: see supra, Statement §B, pp. 10-15. Said study was filed in this Court on July 21, 2004 as Exhibit 2-14 to 2-34 of Appendix F at Application No. 04A79 and was made a permanent citable record in this Court by Justice Souter's salutary action of July 26, 2004.

Great reliance is there placed upon Professor Bruke W. Shartel's powerfully persuasive 1930 article, on "Federal Judges ... and Removal...", 28 Mich. L. Rev. 870:

> "...the framers...wanted to confer only a limited power of removal, and the desired limitations on the power to impeach had to be explicitly stated. These two reasons explain the presence in the Constitution of the express provisions for impeachment; it is not necessary to resort to any supposed intent to establish an exclusive method of removal in order to account for them. On the contrary, logic and sound policy demand that the Congressional power be construed to be a concurrent, not an exclusive power of removal. The purpose and scope of impeachment is not the same as the purpose and scope of the intra-departmental removal powers. Congress was not intended to have all the necessary control over executive and judicial officers; its power was intended as a check from the outside. The Congressional power should not be supposed to take the place of broader and more immediate powers of action within these branches; it should not be supposed to supplant common-law methods of supervision and removal which are just as much needed today (in 1930) as they were in England prior to our Revolution." In spite of the considerations and decisions just mentioned, it has often been assumed that federal *judges* can be removed only by impeachment. This assumption requires a distinction

to be made between judges and other officers which is quite unwarranted. There is no basis for any such distinction in the common-law authorities. And there is no basis in the Constitution itself for distinguishing between judges and other civil officers in this respect." (Footnotes omitted) Shartel at 893-897.

In accord with Prof. Shartel's 1930 points is this portion of the argument presented by the United States in its brief in this Court in 2002 by then Solicitor General Theodore B. Olson, No. 01-1778, McBryde, Judge vs. Committee to Review, etc., et al.:

"Nothing in the text, history, or structure of the Impeachment Clauses suggests an intent to immunize federal judges from all discipline for misconduct not rising to the level of an impeachable offense. As the court of appeals recognized..., moreover, the impeachment provisions apply equally to 'all civil Officers of the United States' (Art. II §4) and were directed at least at much at the Executive Branch as at the Judiciary. See the Federalist No. 65, at 396, 397 (Alexander Hamilton) (C. Rossiter ed. 1961) (characterizing impeachment as 'a bridle in the hands of the legislative body upon the executive servants of the government'). If the bare existence of the impeachment mechanism together with the absence of any other explicit constitutional mechanism for sanctioning official misconduct, were enough to demonstrate an intent that impeachment be an exclusive remedy, that inference would apply with equal force to all "civil Officers of the United States". Yet the impeachment provisions can hardly be thought to furnish the only constitutionally permissible means of punishing misconduct on the part of Executive Branch officers." Olson Brief at 16.

In accord is Shartel, at 897-898; let's listen:

"All officers of the United States (except the President and Vice-President) are alike impeachable under and by virtue of the one phrase, 'all civil Officers of the United States'. Judges are not specially mentioned. There is nothing in the language of this clause nor of the other clauses relating to impeachment to justify the singling out of judges from the civil officers of the United States and giving them a different and peculiar status. The question of construction would have been quite different if the impeachment clauses had been directly joined with the clause regarding judicial tenure, as for example, if the Constitution had recited in a single section that judges' were to hold office during good behavior, and were to be removable by impeachment for specific causes. Such a section might be interpreted as a complete statement regarding the tenure of judges and the methods and causes of their removal. (Note 75)

75: In Evans v. Gore, 253 U.S. 245, 252, the Supreme Court argues thus from the close relation of two clauses relating to judges: "The Convention with unusual accord incorporated in the Constitution the provision that the judges 'shall hold their offices during good behavior, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.' Can there be any doubt that the two things thus coupled in place - the clause in respect of tenure during good behavior and that in respect of an undiminishable compensation - were equally coupled in purpose?"

But such is not the form of the provisions of the Constitution. The impeachment clauses are not found in the article dealing with the judicial branch, but in the articles dealing with the legislative and executive branches; and the power to impeach therein defined affects not judges in particular, but all civil officers alike. There is therefore no warrant whatever, either in the language of the impeachment clauses, or in their relation to other parts of the Constitution, for

> treating impeachment as an exclusive method of removing judges, as distinct form other federal officers." (Footnotes omitted.) Shartel at 897-898.

One mechanism for punishing misconduct of the part of Article III judges - a mechanism of how to "oust" the few judicial "rascals and scamps", Jerome Frank's 1949 politely colorful and understated characterization of dishonest judges - is through the agency of the writ of scire facias **explicitly** available since its elevation by the First Congress on September 24, 1789 ahead of the most celebrated writ in the English law. 1 Stat. 82. This Petitioner advances that it is simply **unbelievable** that a Constitutional convention in 1787, that

> "with unusual accord incorporated in the Constitution the provision that the judge's shall hold their offices during good behavior...'", Evans v. Gore, 253 U.S. 245, 252,

and the First Congress including some Framers in 1789, could have both been so intellectually deaf and dumb as to have been unaware of the historical scire facias connection to "good Behaviour" tenure. One need only recall that 8 states between 1776 and 1784 ordained Constitutions with provisions for "good Behaviour" tenure for some judges: see Note 72 at 39 Frodham Law Review 1, 14 (1970): Impeaching Federal Judges: A study of the Constitutional Provisions, by John D. Feerick. In short, by 1787 everyone knew what lay behind "good Behaviour" tenure, which "was unanimously agreed to". Id. at 18, Note 102. By such action the Founders in 1787 drove the final stake into, and gently placed a period upon one of the causes which had impelled them to Revolution in 1776: i.e. George III "made judges dependent on his will alone, for the tenure of their offices", proclaimed our Declaration of Independence on July 4 that year.

The learned Mr. Feerick also recites the following in another one of his 1970 footnotes:

> "'The grant of an office during good behaviour creates an office for life determinable upon breach of the condition, and behaviour means behaviour in matters concerning the office... Misbehaviour as to the office itself means improper exercise of the functions appertaining to the office, or non-attendance, or neglect of or refusal to perform the duties of the office.' 6 Halsbury 609-10 (footnotes omitted). Accord, Todd 727". Id. at 11, Note 57. (Emphasis supplied.).

That would be the very same Dr. Alpheus Todd cited by Rep. Sumners in 1937, supra, p.18, who "says that good behavior in the English Constitution has always been recognized as a justiciable issue, triable in their courts by scire facias."

It is crucial to observe that the First Congress conferred "power" on the Courts of the United States "to grant writs of habeas corpus for the purpose of an inquiry into the cause of commitment." 1 Stat. 82. Habeas corpus, then as well as now, is a single purposed writ, yet the First Congress set forth that single purpose even as it was silent on the broad purposes for scire facias. Cappy Ascheim is not sufficiently learned on whether, in 1789, scire facias was utilized in connection with municipal liens, but for many years in Pennsylvania the scire facias procedure has been recognized by statute; and one procedure available to litigants after a municipal claim is filed is that

"the owner may contest the municipal claim or the amount of assessment by filing and serving a notice on the claimant municipality to issue a writ of scire facias, thereby forcing a hearing on the municipal claim". (Emphasis supplied.) Penn Twp. v. Hanover Foods Corp, 847 A.2d 219, 224 (2004 Pa. Cmwlth).

Also, see Mowry v. Whitney, 14 Wall. (81 U.S.) 434 (1871) where this Court discussed that one could anciently "institute judicial proceedings (in the English Courts by scire facias) for the purpose of vacating or rescinding the patent which the government has issued to an individual," at 439.

Now, in aid of this Court's appellate jurisdiction, one must ponder how scire facias was meant to unfold in and after 1789, and the notion of a judically controlled judicial ouster (or suspension) proceeding early on would have furnished the diligent citizen (or judicial) researcher of the 18th Century with the same two instances cited by Cappy Ascheim in his 21-page scholarly 2003 study (see Exhibit 2-14 et. seq. of Appendix F at Appl. 04A79) as are cited by the learned Mr. Feerick in his 1970 article:

> "In 1628, Charles I sought to remove Sir John Walter, Chief Judge of the Enchequer...Claiming that his patent was for good behavior and not at the pleasure of the Crown,. Judge Walter resisted the king's efforts to remove him and demanded a scire facias in court to determine his right to continue in office. (Note 55:) In 1672, Sir John Archer, a judge of the common pleas who had been appointed for good behavior, refused to surrender his patent without a 'scire facias'. Although Charles II directed him to cease exercising his duties, he continued to do so. McIlwain, 7 Am.Pol.Sci.Rev. 217, 223." At 10-11.

Now, in aid of the Third Circuit's appellate jurisdiction, it had occasion to very deliberately explain the obvious in a 1980 case with respect to the actions it takes in every case to determine it appellate jurisdiction, i.e. its power to hear and determine a case:

> "In every case, the court examines the notice of appeal, the order appealed from, and the district court docket entries to determine whether the appeal is from a judgment in accordance with 28 U.S.C. §1291, or lies within a specific exception for interlocutory

> decision provided in 28 U.S.C. §1292." (Emphasis supplied.) Kushner v. Winterhur Swiss Ins. Co., 620 F.2d 404,407 (3d Cir. 1980).

That 1980 occasion arose because "appellants here have failed to provide the court with a list of docket entries or a notice of appeal", at 407, ibid.

Calling this an example of "the failure of some members of the bar to observe the basic requirements for briefs and appendices (which) has long troubled this court", the court then looked to the future:

> "Cases similar to this in which counsel fail to observe the Fed. Rules of App. Proc.and the rules of this court may also result in dismissal of appeals." At 407, ibid.

Cappy Ascheim now vigorously avers that the instant matter, Third Circuit No. 02-2888, is not in any way "similar to" Kushner, as he so obviously has "observe(d) the basic requirements" for "members of the bar" "for briefs and appendices" at 02-1558, 02-2888, 02-2930 and 03-2350. In every instance he has met all the basic requirements including those respecting overlength briefs, as in each such instance he followed faithfully what the various clerks of the Third Circuit notified him needed to be done: submit a routine motion for leave respecting what he discovered is the relaxed and informal institutional posture of the Third Circuit, as opposed to what the Ninth Circuit's far more rigid posture is: see USA v. Molina-Tarazon, 285 F.3d 807 (9th Cir. 2002).

Set aside, but only for a moment, the momentous constitutional rights issue for every litigant in an Article III court invoking a power of the "good Behaviour" condition to confront dishonest Article III judges during the pendency of their cases, a power that likely would be characterized by Article III Judge Michael B. Mukasey as one hidden in the structure of the Constitution itself (see Judge Mukasey's reference at Appendix B of Cappy Ascheim's Application granted by Justice Souter on July 26, 2004 at 04A79).

Cappy Ascheim thinks it a salutary exercise to examine the Third Circuit's stated "jurisprudential justification of (its) decision" in Kushner, supra:

> "Each appellant in this court must of necessity allege that the district court violated some rule of substantive or procedural law relating to the findings of fact, the exercise of discretion, the choice of proper legal precept, the interpretation of the precept chosen, or its application to the facts as found. The litigant, then, who charges that the rules were not followed in the district court should himself follow the rules when he applies for relief in this court. Sauce for the goose is sauce for the gander." At 407, ibid.

By necessary implication and irresistible inference, then, every appellant in every Article III Court "must of necessity allege that the (Article III Judge) violated some rule of substantive or procedural law...". It is, however, just so clear that there are violations, and, then there are **violations, VIOLATIONS** that the great Cardozo, relying in 1921 (in The Nature of the Judicial Process, at pp. 33-34) on W.G. Miller's, The Data of Jurisprudence, knew included "an infringement, material and moral, of (a litigant's) rights" where a judge "decide(s) differently" "when two cases" "involve( ) the same point" of procedural law such as routine overlength brief motions in the Third Circuit. Instantly, the same judge, a month apart, grants a routine motion by the United States Government to file a brief that is 88 pages overlength, but a month later denies a routine motion by Cappy Ascheim to file a 37 plus 21 page brief, thus erecting two different standards without (so far) being compelled, in due form of law, to produce some written jurisprudential justification of such deliberately created different standards, conduct so plainly violative of the constitutionally required "good Behaviour".

Thanks to Circuit Judge Nygaard, Appendix D dated Feb. 24, 2004, Circuit Judge Rendell's nasty, raw, naked

corrupt exercise of power, at least designed to keep Cappy Ascheim's 21-page, 100% completed, scholarly study of scire facias and "good Behaviour" off the pubic record at 02-2888, an exercise that really amounts to an attempt to censor legal history, has intellectually been blown to pieces inside her judicial chambers. What is to be done, then, about the remaining 37 pages of the 58-page Informal Brief, and, more importantly, what remains to be done about the judicial "Behaviour" of Circuit Judge Rendell as spread upon the public records of this Court at Application No. 04A79 and in the instant Petition. In Cappy Ascheim's judgment, there is a powerfully simple, interim solution: let there be issued from this Court, a conditional writ of scire facias that will become effective upon a yet-to-be-determined date, directed to the Court to be established by and answerable to the judicial department of the United States: see, supra, p. 10, for a proposed name for such a long overdue Judiciary Court.

Cappy Ascheim came into the Third Circuit at 02-2888 by taking many and varied procedural steps acknowledged to be proper by the Third Circuit in a footnote to its unreported Opinion in connected appeal at 02-1558:

> "We note that appellant has perfected an appeal from the District Court's subsequent order (entered June 4, 2002) dismissing the underlying case (at 00-1056) in its entirety at C.A. No. 02-2888." App. 23a.

As previously noted, a green light flashed permanently from that footnote so that Cappy Ascheim could make all appropriate "arguments regarding the propriety of the District Court's dismissal" on June 4, 2002 of "the underlying case in its entirety". Of course, his overlength March 24, 2003 Informal Brief also laid the foundation of what he regards as a grant of power, hidden in the structure of the Constitution itself that was bequeathed to him, and to all other Article III litigants acting during the pendency of their cases. This grant of power continues to flow directly from

the Framers' inclusion in 1787 of the tenure limitation on judicial service, which doubles as a condition capable of being breached - "good Behaviour" - the violations of which breach create justiciable issues triable on scire facias in court. Such was recognized:

by Sir John Walter in 1628 during the reign of Charles I;

by Sir John Archer in 1672 during the reign of Charles II;

by Senator Lodge in 1912, supra, 48 Cong. Rec. 7999-8000,

and, as will be, it is fervently prayed, recognized here in this Honorable Court pursuant to your collective power to issue writs of scire facias as preserved in the All Writs Act, 28 U.S.C. §1651(a), from the First Congress' proclaiming of its availability in Section 14 of the historic Judiciary Act of Sept 24, 1789, 1 Stat. 73, 81-82.

All of this is easy to grasp, because, as Professor Shartel pointed out,

> "(t)he inconvenience and delay involved in trial by impeachment is probably the strongest reason for recognizing the concurrent judicial method of removal." 28 Mich. L. Rev. 894, Note 70, Federal Judge - Appointment, Supervision, and Removal - Some Possibilities Under the Constitution.

CONCLUSION

For the foregoing reasons, this Petition, the first of its kind in American History, for Writs of Scire Facias and Certiorari, should be granted.

Respectfully submitted,

Mr. Cappy Ascheim
5100 Fifth Avenue
Unit 407
Pittsburgh, Pennsylvania 15232
412-681-6178
(or 412-363-4209)
In propria persona

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

02-2888

ASCHEIM

v.

JUG, et al.

Cappy Ascheim, Appellant
Western District of Pennsylvania Civil No. 00-cv-01056)

ORDER

Pursuant to Rule 3(a) of the Federal Rules of Appellate Procedure and Third Circuit LAR Misc. 107.2,

It is O R D E R E D that the above-entitled case is hereby dismissed for failure to timely prosecute;

It is FURTHER O R D E R E D that a certified copy of this order be issued forthwith as the mandate.

For the Court,

/s/ Marcia M. Waldron
Clerk

Date: June 5, 2003
cc: Cappy Ascheim
Gary Milnes, Esq.
Henry E. Rea, Esq.

APPENDIX B

APPENDIX B
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

May 7, 2003
#D-82

No. 02-2888

CAPPY ASCHEIM
Appellant
v.
FRED C. JUG, JR., ESQUIRE, et al.
(W.D. of PA Civil No. 00-cv-01056)

Present: Rendell, Circuit Judge

1. Motion by Pro Se Appellant to Reconsider Court Order Dated April 17, 2003, to Vacate Court Order Dated April 17, 2003 and to Strike the "Noncompliance Letter" and "Compliance Received" Docket Entries

/s/ Gregory P. Kane
Gregory P. Kane 267 299 4946
Briefing Specialist/Court Crier

Response due: 5/15/03
See Court Order of 4/17/03

ORDER

The foregoing (*motion is DENIED). [*Judge's handwriting]

By the Court,

/s/ illegible
Circuit Judge

Dated: May 9 2003
GPK/cc: CA GM

APPENDIX C
APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

April 8, 2003
#D-82

No. 02-2888

CAPPY ASCHEIM
Appellant

v.

FRED C. JUG, JR., ESQUIRE, et al.
(W.D. of PA Civil No. 00-cv-01056)

Present: Rendell, Circuit Judge

1. Letter Dated March 24, 2003 Construed as Motion by Pro Se Appellant for Leave to File Overlength Brief.

/s/ Gregory P. Kane
Gregory P. Kane 267 299 4946
Briefing Specialist/Court Crier

Response due: 4/7/03
See Clerk's Order of 4/2/03

ORDER

The foregoing motion is DENIED. The pro se appellant has 14 days from the date of this order to file a conformed brief.

By the Court,

/s/ illegible
Circuit Judge

Dated: Apr 17 2003
GPK/cc: CA GM

APPENDIX D

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

January 27, 2004

02-2888

CAPPY ASCHEIM, Appellant

v.

FRED C. JUG, ESQUIRE, et al.

(US DC Western - Pittsburgh Civil No. 00-1055)
(sic - should be 1056)(rjc)

Present: NYGAARD, Circuit Judge

Motion by Appellant to For Leave to File Exhibits to the Petition for Rehearing.

Copy of Petition for Rehearing

(Line blank)
Susan M. Acerba
267-299-4920
Case Manager

PETITION GRANTED [Judge's handwriting]

By the Court

/s/Nygaard
Circuit Judge

Dated: Feb 24 2004

SMACC TO: CA, GM

APPENDIX E
APPENDIX E

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

October 2, 2003
B-3

02-2888

CAPPY ASCHEIM, Appellant

v.

FRED C. JUG, ESQUIRE, et al.

(US DC Western - Pittsburgh Civil No. 00-1055)
(sic - should be 1056)(rjc)

Present: NYGAARD, BARRY and SMITH, Circuit Judges

Motion by Appellant to Reopen the Appeal.

(Line Blank)

Case Closed for Failure
to File Brief & Appendix

Susan M. Acerba
267-299-4920
Case Manager

The foregoing motion by appellant to reopen the appeal is denied.

By the Court

/s/Richard L. Nygaard
Circuit Judge

Dated: October 24, 2003

SMA: CC: TO: AC, GM

APPENDIX F

Office of the Clerk
UNITED STATES COURT OF APPEALS
For the Third Circuit
21400 United States Courthouse
601 Market Street
Philadelphia, PA 19106-1790
www.ca3.uscourts.gov

May 5, 2004

Mr. Cappy Ascheim
5100 Fifth Avenue, Unit 407
Pittsburgh, PA 15232

(Note: Please see C.A note at application 04A79 at Appendix C.)

Re: Docket No. 02-2888
Ascheim vs. Jug
D. C. No. 00-cv-01056

Dear Mr. Ascheim:

This will acknowledge receipt of document entitled "Petition for Rehearing En Banc" in the above-entitled case.

An order was filed on 4/23/04 denying your petition for panel rehearing. Pursuant to Rule 40 of the FRAP a petition for rehearing en banc was due when your petition for panel rehearing was filed. The Court will only consider one petition for rehearing and not serial petitions.

Very truly yours,
MARCIA M. WALDRON
Clerk

By: /s/Susan M. Acerba
Case Manager

cc: Gary Milnes, Esq.

APPENDIX G

Relevant Constitutional and Statutory Provisions
United States Constitution - September 17, 1787
Article III, Section 1.

The Judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

First Congress, Sess. I. Ch. 20. September 24, 1789
1 Stat. 73, 81-82 (Peters' Edition - 1850)

Sec. 14. And be it further enacted, That all the beforementioned courts of the United States, shall have power to issue writs of *scire facias, habeas corpus,* and all other writs not specially provided for by statute, which may be necessary for the exercise of their respective jurisdictions, and agreeable to the principles and usages of law. And that either of the justices of the supreme court, as well as judges of the district courts, shall have power to grant writs of *habeas corpus* for the purpose of an inquiry into the cause of commitment. ...

Title 28, United States Code, §1651(a) - Writs
62 Stat. 944

The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

APPENDIX H
IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

CAPPY ASCHEIM, Plaintiff, v. FRED C. JUG, JR. ESQUIRE, and BRANDT, MILES (sic) & REA, a Professional Corporation, Attorneys at Law, Defendants.	)	Civil Action No. 00-1056

MEMORANDUM ORDER

This action arises from the defendants' attempts to collect certain condominium fees due and owing from plaintiff's mother.

Pro se plaintiff Cappy Ascheim ("Ascheim") is the son of Esther Ascheim, the owner of a unit in the condominium known as 5100 Fifth Avenue in Pittsburgh. The defendants are attorneys who were retained by the 5100 Fifth Avenue Condominium Association to collect Esther Ascheim's past due condominium fees. Ascheim's complaint and amendment thereto is not a model of clarity, consisting of thirty pages of mind-numbing detail. However, it appears that the gravamen of the complaint is that the defendants violated the Fair Debt Collection Practices Act, 15 U.S.C. Section 1962(sic), et. seq. (the "Act") during their efforts to collect the past due condominium fees. Pending before the court is defendants' motion to dismiss plaintiff's complaint and amended complaint pursuant to Fed. R. Civ. P. 12(b)(6)(Doc. No. 5) and motion for sanctions (Doc. No. 8).

I. Motion to Dismiss

A. Standard of Decision

In deciding a Rule 12(b)(6) motion, we accept all well-pleaded facts as true and draw all inferences in favor of the non-moving party. We focus on the pleadings in addressing the motion, but may also consider other items appearing in the record of the case. Oshiver v. Levin, Fishbein, Sedran & Berman, 38 F.3d 1380, 1384-85 and n.2 (3d Cir. 1994). A claim should not be dismissed unless it appears beyond doubt that the non-moving party can prove no set of facts in support of its allegations which would entitle it to relief. Conley v. Gibson, 355 U.S. 41/45-46 (1957).

B. Analysis

The defendants argue that Ascheim fails to state claim because the Act does not cover condominium fees. We disagree.

The defendants cite Zimmerman v. HBO Affiliate Group, 834 F.2d 1163, 1168-69 (3d Cir. 1987) in support of their position, wherein the United States Court of Appeals for the Third Circuit stated that the type of "debt" covered by the Act is one which involves the offer or extension of credit to a consumer. In Pollice v. National Tax Funding, L.P., 225 F.3d 379, 400-01 (3d Cir. 2000), however, the Court of Appeals held that the statement in Zimmerman was dictum and went on to hold that water and sewer obligations meet the definition of a "debt" under the Act. Based on the Court of Appeals' analysis in Pollice, we find that condominium fees qualify as a "debt" under the Act.

The defendants maintain in the alternative that Ascheim's claim for an alleged violation of 15 U.S.C. Section 1692(b), which prohibits a debt collector from communicating with third persons concerning the collection

of a debt, must be dismissed because the debt at issue in this case is Ascheim's mother, not his. The defendants argue, therefore, that Ascheim lacks standing to assert this claim.

The complaint alleges, and the defendants has recognized for purposes of their motion, that Ascheim is acting on behalf of his mother via a power of attorney. Thus, we interpret the complaint as asserting a Section 1962(sic)(b) claim by Ascheim on his mother's behalf.

The defendants also argue that the Section 1962(sic)(b) claim should be dismissed because an attorney purporting to represent Ascheim contacted the defendants and began discussing the condominium fees. They contend that the only communication instituted by them was a follow-up letter to the attorney regarding that conversation.

Section 1962(sic)(b) prohibits communication with third parties concerning a debt, except communication with a consumer's attorney. Ascheim alleges in his complaint that the attorney who contacted the defendants was not representing him in connection with the condominium fees. Indeed, Ascheim alleges that during the telephone conversation with the defendants, the attorney informed the defendants that he was not representing Ascheim. Compl. para. 71. We cannot find at this time, therefore, that Ascheim fails to state a claim under Section 1962(sic)(b).

Accordingly, the defendants' motion to dismiss will be denied.

II. Motion For Sanctions

The defendants' move for sanctions due to Ascheim's failure to file a response to their motion to dismiss.

Ascheim has been very diligent in the prosecution of the instant suit, meeting all other requisite filing dates. As to his failure to timely file a response to the motion to dismiss, Ascheim had delivered to chambers a motion for an extension of time to file the response. Under these

circumstances, we find that sanctions for failing to file a response are not warranted.

Accordingly, the defendants' motion for sanctions will be denied.

For the foregoing reasons, IT IS HEREBY ORDERED that the defendants' motion to dismiss the plaintiff's complaint and amended complaint (Doc. No 5) is DENIED and the defendants' motion for sanctions (Doc. No. 8 is DENIED.

A status conference shall be held on May 25, 2001 at 11:30 a.m.

SO ORDERED this 30 day of March 2001.

/s/ Robert J. Cindrich
Robert J. Cindrich
United States District Judge

APPENDIX I
IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

CAPPY ASCHEIM,	)	
Plaintiff,	)	
v.	)	Civil Action No.
	)	00-1056
FRED C. JUG, JR. ESQUIRE,	)	
and BRANDT, MILES (sic) & REA,	)	
a Professional Corporation,	)	
Attorneys at Law,	)	
Defendants.	)	
	)	

MEMORANDUM ORDER

This action arises from the defendants' attempts to collect certain condominium fees due and owing from Esther Ascheim ("E. Ascheim"). Pro se plaintiff Cappy Ascheim ("C. Ascheim") is the son of E. Ascheim, the owner of a unit in the condominium known as 5100 Fifth Avenue in Pittsburgh. C. Ascheim is acting on behalf of his mother, who is incompetent, via a durable power of attorney and brings this suit as her representative. C. Ascheim is not licensed to practice law. The defendants are attorneys who were retained by the 5100 Fifth Avenue Condominium Association to collect E. Ascheim's past due condominium fees. C. Ascheim's complaint and amendment thereto is not a model of clarity, consisting of thirty pages of agonizing ramblings. However, it appears that the gravamen of the complaint is that the defendants violated the Fair Debt Collection Practices Act, 15 U.S.C. Section 1962(sic), et seq. ("FDCPA") during their efforts to collect the past due condominium fees from E. Ascheim.

Pending before the court is the defendants' Motion to Enjoin Cappy Ascheim From Prosecuting This Action Without the Assistance of Counsel (Doc. No. 32). Citing Osei-Afriyie v. The Medical College of Pennsylvania, 937 F.2d 876 (3d Cir. 1991), the defendants argue that C. Ascheim cannot prosecute this suit on behalf of his mother without being represented by counsel. We agree.

In Osei-Afriyie, the plaintiff's children were treated by the defendant hospital. The plaintiff, who was not an attorney, instituted a medical malpractice action against the hospital on behalf of his children. Although the issue of plaintiff acting as legal counsel had never been raised in the lower court, the Court of Appeals raised the issue sua sponte, finding that the plaintiff could not represent his children. The Court explained:

> "(W)e agree with Meeker v. Kercher, 782 F.2d 153, 154 (10th Cir. 1986) (per curiam), that a non-attorney parent must be represented by counsel in bringing an action on behalf of his or her child. The choice to appear pro se is not a true choice for minors who under state law, see Fed. R. Civ. P. 17(b), cannot determine their own legal actions. There is thus no individual choice to proceed pro se for courts to respect, and the sole policy at stake concerns the exclusion of non-licensed persons to appear as attorneys on behalf of others. It goes without saying that it is not in the interest of minors or incompetents that they be represented by non-attorneys. Where they have claims that require adjudication, they are entitled to trained legal assistance so their rights may be fully protected."

Osei-Afriyie, 937 F.2d at 882-883 (quoting Cheung v. Youth Orchestra Found. of Buffalo, Inc., 906 F.2d 59,61 (2d Cir. 1990)); see Meeker, 782 F.2d at 154 ("We hold that under Fed. R. Civ. P. 17(c) . . . a minor child cannot bring suit

through a parent acting as next friend if the parent is not represented by an attorney.") Just so here.

C. Ascheim cannot, as he argues, serve as legal counsel to his incompetent mother pursuant to a durable power of attorney. Pursuant to Fed. R. Civ. P. 17(c), he may sue in her name as her representative, but he must retain legal counsel to bring and prosecute that suit. Indeed, if one were to accept C. Ascheim's position, anyone could engage in the practice of law under the guise of a power of attorney.

Moreover, this case is a model example of one where it is not in the interest of the incompetent to be represented by a non-attorney. This case is a simple one, concerning one or two alleged violations of the FDCPA with a maximum recovery of $2,000. Yet, C. Ascheim failed to file a response to the defendants' motion for summary judgment which was due on November 3, 2001. See Case Management Order (Doc. No. 21) (responses to summary judgment motions due thirty days after the filing of such motions). C. Ascheim has filed instead a seemingly endless series of motions and briefs consisting of largely irrelevant material that in no way advances the progress of the case. Accordingly, the defendants' motion to enjoin C. Ascheim from prosecuting this action without the assistance of counsel will be granted. Plaintiff will be given thirty days to retain counsel. Plaintiff's failure to do so will result in dismissal of the case.[1]

For the foregoing reasons, IT IS HEREBY ORDERED that the defendants' Motion To Enjoin Cappy Ascheim From Prosecuting This Action Without The Assistance Of Counsel (Doc. No. 33) is GRANTED. Accordingly, Cappy Ascheim is enjoined from acting as legal counsel in this action. Plaintiff shall have thirty (30) days

---

[1] We note that after reviewing the defendants' motion for summary judgment, it appears that judgment should be entered in favor of the defendants and against the plaintiff. We are constrained from ruling on the emotion, however, until plaintiff has been given an opportunity to retain counsel and file an appropriate response.

from the date of this memorandum order to retain counsel. If counsel has not entered an appearance on behalf of plaintiff within thirty (30) days of the date of this memorandum order, the case will be dismissed.

IT IS FURTHER ORDERED, that defendants' motion to schedule argument on their motion to enjoin C. Ascheim from prosecuting the case (Doc. No. 37) is DENIED as moot.

Also pending are the following motions filed by C. Ascheim, which are all denied as he cannot serve as counsel for his mother in this action:

- Plaintiff's Motion to Amend (Doc. No. 22) is DENIED.
- Plaintiff's Motion for Extraordinary Relief (Doc. No. 35) does not appear to be a motion but a copy of a motion filed with the Pennsylvania Supreme Court in connection with a separate action before that court. To the extent the motion seeks action before this court, however, the motion is DENIED.
- Plaintiff's Motion to Amend (Doc. No. 36) is DENIED.
- Plaintiff's Motion to Extend Time (Doc. No. 38) is DENIED.
- Plaintiff's Motion to Extend Time (Doc. No 42) is DENIED.

SO ORDERED this 25 day of January, 2002.

/s/ Robert J. Cindrich
Robert J. Cindrich
United States District Judge

APPENDIX J
IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

CAPPY ASCHEIM, Plaintiff, v. FRED C. JUG, JR. ESQUIRE, and BRANDT, MILES (sic) & REA, a Professional Corporation, Attorneys at Law, Defendants.	)	Civil Action No. 00-1056

ORDER

Pursuant to the Memorandum Order dated January 25, 2002 (Doc. No. 50) plaintiff was given thirty days leave to retain counsel or suffer dismissal of the above-captioned action. The thirty day period has expired and counsel has not yet entered an appearance on behalf of plaintiff. Accordingly, IT IS HEREBY ORDERED that the case is DISMISSED.

The Clerk is directed to mark this case closed.

SO ORDERED this 3 day of June, 2002.

/s/ Robert J. Cindrich
Robert J. Cindrich
United States District Judge

APPENDIX K

HPS-141 **UNREPORTED-NOT PRECEDENTIAL**

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 02-2930

IN RE: CAPPY ASCHEIM, Petitioner

On a Petition for Writ of Mandamus from the
United States District Court for the Western District of
Pennsylvania (Related to W.D. Pa. Civ. No. 00-cv-1056)
Honorable Robert J. Cindrich

Submitted Under Rule 21, Fed. R. App. Pro.
August 6, 2002

Before: BECKER, CHIEF JUDGE,
WEIS AND GARTH CIRCUIT JUDGES
(Filed September 17, 2002)

OPINION

PER CURIAM

Pro se petitioner Cappy Ascheim seeks a writ of mandamus directing the United States District Court for the Western District of Pennsylvania to vacate its order dismissing his lawsuit brought pursuant to the Fair Debt Collection Practices Act "(FDCPA"), 15 U.S.C. §1692. For the reasons that follow, we will deny the mandamus petition.

In May 2002, Ascheim filed a complaint in the District Court alleging that defendants violated the FDCPA during efforts to collect condominium fees from his mother. In January 2002, the District Court entered an order granting defendants' motion to enjoin Ascheim from prosecuting the lawsuit on behalf of his mother without an attorney. Ascheim filed a notice of appeal, which is currently pending in this Court. See C.A. No. 02-1558. On June 4, 2002 the District Court entered an order dismissing Ascheim's complaint for failure to obtain an attorney in violation of the District Court's order entered in January 2002. Ascheim filed a motion for reconsideration followed by a notice of appeal. Ascheim's motion for reconsideration is still pending in the District Court and his appeal is pending in this Court.[1] See C.A. No. 02-2888. Ascheim's mandamus petition seeks an order directing the District Court to vacate its order dismissing his case entered on June 4, 2002.

A writ of mandamus is an extreme remedy that is invoked only in extraordinary situations. See Kerr v. United States Dist. Court, 426 U.S. 394, 40 (1976). Additionally, "mandamus is not a substitute for appeal and a writ of mandamus will not be granted if relief can be obtained by way of our appellate jurisdiction". In re Chambers Development Company, Inc., 148 F.3d 214, 226 (3d Cir 1998). Ascheim has made no showing (nor does it appear that he could show) that the relief requested in his petition for writ of mandamus cannot be pursued in his pending appeals. As noted, mandamus is not a substitute or alternative to the normal appellate process.

Accordingly, we will deny Ascheim's writ of mandamus.

---

[1] Because Ascheim's notice of appeal was filed before the District Court disposed of his motion for reconsideration, the notice docketed at 02-2888 will become effective to appeal the underlying order when the District Court disposes of his motion for reconsideration. Fed R. App. P. 4(a)(4)(B)(i).

APPENDIX L
IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

CAPPY ASCHEIM, Plaintiff, v. FRED C. JUG, JR. ESQUIRE, and BRANDT, MILES (sic) & REA, a Professional Corporation, Attorneys at Law, Defendants.	)	Civil Action No. 00-1056

MEMORANDUM ORDER

Pending before the court is plaintiff's motion for reconsideration (Doc. No. 55) of the court's June 3, 2002 order (Doc No. 54) dismissing the case.

Background

This action arises from the defendants' attempts to collect certain condominium fees due and owing from Esther Ascheim ("E Ascheim"). Pro se plaintiff Cappy Ascheim ("C Ascheim") is the son of E. Ascheim, the owner of a unit in the condominium known as 5100 Fifth Avenue in Pittsburgh. C. Ascheim is acting on behalf of his mother, who is incompetent, via a durable power of attorney and brings this suit as her representative. C. Ascheim is not licensed to practice law. The defendants are attorneys who were retained by the 5100 Fifth Avenue Condominium Association to collect E. Ascheim's past due condominium fees. C. Ascheim's complaint and amendment thereto is not a model of clarity. However, it appears that the gravamen of the complaint is that the defendants violated the Fair Debt Collection Practices Act, 15 U.S.C. Section 1962(sic), et seq.

("FDCPA") during their efforts to collect the past due condominium fees from E. Ascheim.

Citing Osei-Afriyie v. The Medical College of Pennsylvania, 937 F.2d 876 (3d Cir. 1991), the defendants filed a Motion to Enjoin Cappy Ascheim From Prosecuting This Action Without the Assistance of Counsel (Doc. No. 32) arguing that C. Ascheim cannot prosecute this suit on behalf of his mother without being represented by counsel. By memorandum order dated January 25, 2002 (Doc. No. 50), the court granted the defendants' motion and enjoined C. Ascheim from acting as legal counsel in this action. The court also granted plaintiff thirty days leave from the date of the January 25, 2002 memorandum order to retain counsel and further ordered that the case would be dismissed if counsel had not entered an appearance on behalf of plaintiff within the thirty day period.

Before the court entered any additional orders in the case, C. Ascheim filed a notice of appeal to the United States Court of Appeals for the Third Circuit on February 25, 2002 directed at the January 25, 2002 memorandum order. Thereafter, the court entered an order dated June 3, 2002 (Doc. No. 54) dismissing the case for plaintiff's failure to have legal counsel enter an appearance. On June 14, 2002, C. Ascheim filed the pending motion for reconsideration directed at the June 3, 2002 order. On July 8, 2002, he filed another notice of appeal. In an order dated August 7, 2002, the Court of Appeals stayed ruling on the two appeals pending this court's disposition of the motion for reconsideration.

Ruling

As has been the case with most of C. Ascheim's filings in this case, the precise relief sought by his motion for reconsideration is difficult to discern. It appears, however, that the motion is based on the argument that the court was without jurisdiction to enter the June 3, 2002 order

dismissing the case in light of the February 25, 2002 notice of appeal.

"Ordinarily, a notice of appeal divests the district court of jurisdiction". Martinez v. Quality Value Convenience, Inc., 63 F. Supp. 2d 651, 653 n.1 (E.D. Pa. 1999) (citing Griggs v. Provident Consumer Discount Co., 459 U.S. 56, 58 (1982)). However, "the district courts should continue to exercise [] jurisdiction when faced with clearly premature notices of appeal". Mondrow v. Fountain House, 867 F.2d 798, 800 (3d Cir. 1989). "Unlike a timely notice of appeal, a premature notice of appeal does not divest the district court of jurisdiction". Id.

The February 25, 2002 notice of appeal was prematurely filed. That part of the January 25, 2002 memorandum order enjoining C. Ascheim from acting as legal counsel was not immediately appealable. See United States v. Whittaker, 268 F.3d 185,192 (3d Cir. 2001) ("(W)hen a court disqualifies counsel in a civil case, its order is not immediately appealable".). Nor was that part of the order granting plaintiff thirty days leave to retain legal counsel, or suffer dismissal of the action, a final appealable order. The court had not yet dismissed the case. See Van Cauwenberghe v. Biard, 486 U.S. 517, 521-522 (1988) ("A party generally may not take an appeal . . . until there has been a decision by the district court that 'ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.'" (citation omitted)). Thus, the court was not divested of jurisdiction to enter the June 3, 2002 order dismissing the case for failure to retain legal counsel.

Accordingly, IT IS HEEBY ORDERED that the motion for reconsideration (Doc. No. 55) is DENIED.

SO ORDERED this 31 day of October, 2002.

/s/ Robert J. Cindrich
Robert J. Cindrich
United States District Judge

APPENDIX M
UNREPORTED-NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 02-1558

CAPPY ASCHEIM,
Appellant
v.
FRED C. JUG, JR., ESQUIRE;
BRANDT, MILNES & REA, a professional
corporation, attorneys at law

(Amended See Clerk's Order of 5/22/02)

On Appeal From the United States District Court
for the Western District of Pennsylvania
(D.C. Civ. No. 00-cv-01056)
District Judge: Honorable Robert J. Cindrich

Submitted Under Third Circuit LAR 34.1(a)
December 2, 2002

Before: ALITO, BARRY AND GARTH, CIRCUIT JUDGES

(Filed January 7, 2003)

OPINION

PER CURIAM,

Appellant, Cappy Ascheim, appeals the District Court's order granting appellees' motion seeking to enjoin him from prosecuting an action under the Fair Debt Collection Practices Act, 15 U.S.C. §1962, et. seq. on behalf of his mother. We have jurisdiction over the instant appeal pursuant to 28 U.S.C. §1292(a)(1)[1] We review a District Court's order granting or denying injunctive relief for an abuse of discretion, its factual findings for clear error, and its determinations of questions of law *de novo*. The NutraSweet Co. v. Vit-Mar Enters., Inc., 176 F.3d 151, 153 (3d Cir 1999). After reviewing the District Court record and the parties' submissions on appeal, we conclude that the District Court did not abuse its discretion when it determined that injunctive relief was warranted in this case.

As the District Court correctly concluded, under the principles espoused by this Court in Osei-Afriyie v. The Medical College of Pennsylvania, 937 F.2d 876 (3d Cir. 1991), Ascheim, a non-lawyer, may not represent the interests of any other person in federal court. Accordingly, we will affirm the District Court's order enjoining Ascheim from prosecuting the underlying action on behalf of his incompetent mother without the representation of counsel.

---

[1] We note that appellant has perfected an appeal from the District Court's subsequent order dismissing the underlying case in its entirety at C.A. No. 02-2888. The parties' arguments regarding the propriety of the District Court's dismissal of any claims Ascheim allegedly brought in his individual capacity, as opposed to those brought on behalf of his mother, should thus be presented in the briefs submitted in that appeal once the District Court has disposed of Ascheim's pending post-decision motion.

APPENDIX N
General Docket
US Court of Appeals for the Third Circuit
Court of Appeals Docket #: 01-4374
01-4374 USA v. Merlino

. . .

3/4/03 MOTION by Appellee USA in 01-4374, 01-4375, 01-4392, 01-4394, 01-4436, 01-4441, and 01-4453 to file brief containing 57,571 words, filed. Answer due 3/17/03. Certificate of Service dated 3/4/03. (gpk) [01-4374 01-4375 01-4392 01-4394 01-4436 01-4441 01-4453]

. . .

3/10/03 ORDER (Clerk) referring to a motions panel Appellee's motions to file an overlength brief and to file brief and supplemental appendix out of time in 01-4374, 01-4375, 01-4392, 01-4394, 01-4436, 01-4441 and 01-4453, filed. (gpk) [01-4374 01-4375 01-4392 01-4394 01-4436 01-4441 01-4453]

3/13/03 BRIEF on behalf of Appellee USA in 01-4374, 01-4375, 01-4392, , 01-4394, 01-4436, 01-4441 and 01-4453. Pages: 298, Copies: 10, Word Count: 57,571 (granted by Court Order dated 3/13/03 Delivered by mail, filed. Certificate of Service date 3/4/03. (gpk) [01-4374 01-4375 01-4392 01-4394 01-4436 01-4441 01-4453]

. . .

3/13/03 ORDER (RENDELL - Circuit Judge) granting motion by appellee USA in 01-4374, 01-4375, 01-4392, 01-4394, 01-4436, 01-4441 and 01-4453 for leave to file brief on behalf of US involving seven defendants * in excess of page limit, filed. (* and seven appeals) D-66 (gpk) [01-4374 01-4375 01-4392 01-4394 01-4436 01-4441 01-4453]

. . .

APPENDIX O

USCA3 Docket Sheet for 02-2888

02-2888 Ascheim v. Jug, et al.

. . .

6/2/03 Response by appellant to Attorney Gary Milnes's second written, affirmative request to the Court to dismiss the within appeal, received. (sma) (02-2888)

6/5/03 CLERK ORDER (LAR Misc 107.2): Procedurally Terminated Without Judicial Action: Default. (sma) (02-2888)

6/5/03 Certified copy of order to Lower Court. (sma) (02-2888)

6/23/03 1st, 2nd , 3rd, 4th, & 5th, SUPPLEMENTAL RECORD returned. (sma) (02-2888)

6/23/03 RECORD RETURNED. (sma) (02-2888)

. . .

Docket as of July 1, 2003 6:06 pm Page 7

7/9/03 4:30 PM

APPENDIX P
U.S. District Court
Western District of Pennsylvania (Pittsburgh)

CIVIL DOCKET FOR CASE #: 00-CV-1056

ASCHEIM v. JUG, et al

District Court Web PACER(v2.4) Docket Report

00-1056

6/24/03	62	CERTIFIED COPY OF ORDER dated 6/5/03 from U.S. Court of Appeals for the Third Circuit directing that the above entitled case is hereby dismissed for failure to timely prosecute; FURTHER ORDERED that a certified copy of this order be issued forthwith as the mandate. (plh) [Entry date 06/25/03]
6/24/03	--	Record on Appeal returned form U.S. Court of Appeals . . . (Receipt of same mailed 6/25/03) (plh) [Entry date 06/25/03]
7/15/03	--	MOTION TO REOPEN APPEAL per USCA (plh) [Entry date 7/15/03]
7/15/03	--	Certified and transmitted Actual Record on Appeal to U.S. Court of Appeals: (plh) [Entry date 7/15/03]
7/22/03	--	RECEIPT from USCA of receiving actual record on 7/16/03 (plh) [Entry date 07/22/03]
8/6/04	--	Notice from Supreme Court of US advising that application for extension of time within which to file petition for writ of certiorari extended to 9/20/04. (pt) [Entry date 08/06/04]

APPENDIX Q

Presidential Nominations Full Display

Nomination: PN1648-103
Date Received: August 12, 1994

Robert J. Cindrich, of Pennsylvania, to be United States District Judge for the Western District of Pennsylvania vice Gustave Diamond, retired.

REFERRED TO: Senate Judiciary
REPORTED BY: Senate Judiciary

LEGISLATIVE ACTIONS

Floor Action: (5120) August 12, 1994 - Received in the Senate and referred to the Committee on Judiciary.

Committee Action: (5750) September 21, 1994 - Committee on Judiciary: Hearings held.

Committee Action: (5890) September 28, 1994 - Committee on Judiciary. Ordered to be reported favorably

Floor Action: (5155) September 28, 1994 - Reported by Mr. Biden, Committee on the Judiciary, without printed report.

Floor Action: (5180) September 28, 1994 - Placed on Senate Executive Calendar: Calendar No 1291

Floor Action: (5310) October 07, 1994 - Confirmed by the Senate by Voice Vote

ORGANIZATION: The Judiciary

Control Number: 103PN0164800

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